IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

RSA.No. 26 of 2007()

AGAINST THE JUDGMENT DT.31.1.2006 IN RFA.22/2004 of D.C. & SESSIONS COURT,KOLLAM

AGAINST THE JUDGMENT AND DECREE DT.17.2.04 IN OS.7/1996 of PRL.M.C., KOLLAM

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APPELLANT/PLAINTIFF:

KAMALAKSHY, W/O.SUKUMARANASAN,
ANJETHU KRISHNA BHAVAN,
AMRUTHAKULANGARA CHERRY,
MUNDAKKAL VILLAGE.

BY ADV. SRI.K.P.DANDAPANI (SR.)

RESPONDENTS: DEFENDANTS:

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1. **OMANA, W/O.SIVADASAN,**
   THITTAYIL VEEDU, THEKKEVILA CHERRY,
   MUNDAKKAL VILLAGE.

2. **SIVADASAN, H/O.OMANA,**
   THITTAYIL VEEDU, THEKKEVILA CHERRY,
   MUNDAKKAL VILLAGE.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 04/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.
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R.S.A. No. 26 OF 2007

Dated this the 4th day of June, 2007
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JUDGMENT

Plaintiff in O.S.7/1996, on the file of Munsiff Court, Kollam is the appellant. Respondents are defendants. Appellant instituted the suit seeking a decree for declaration of her title and fixation of boundary and for a permanent prohibitory injunction or in the alternative for recovery of possession. The plaint schedule property is part of 25 cents of land in survey No. 1443 of Mundakkal village, which originally belonged to Sukumaran Asan, husband of appellant, his brother Janardhanan Asan and his nephew Balakrishnan Asan, under Ext.A1 partition deed of 1968. The properties were divided into three plots therein. The western 8½ cents was allotted to Balakrishnan Asan, eastern 8¼ cents was allotted to Sukumaran Asan and middle 8¼ cents was allotted to legal heirs of Janardhanan Asan. According to plaintiffs under Ext.A2, 1½ cents which lies to the south of the eastern 8¼ cents, was purchased by Sukumaran Asan and thus he has been in possession of 9 cents, which is a compact plot and on his death on 12.6.1991 under Ext.A3 will executed by him, it devolved on appellant and appellant under Ext.A5 assignment deed assigned 4.080 cents in survey No. 1444, in favour of Chandrababu and his wife Sasikumari in 1994 and retained with her the balance of 4.170 cents which is the plaint schedule property and she has title and possession over the same. 2nd respondent resisted the suit

contending that out of 8¼ cents allotted to legal heirs of Janardhanan Asan, under Ext.B1 purchase certificate, 2nd respondent obtained kudikidappu right over 4 cents of property and out of the balance, 1.90 cents was assigned in favour of first respondent as per Ext.B2 sale deed in 1995 and legal heirs of Janardhanan Asan did not retain with them any portion of the property and appellant did not have any property which lies to the north of the property covered under Ext.B1. It was also contended that subsequent to Ext.A1 partition deed, the now existing way which lies on the northern portion of the property was formed by taking some portion of the properties allotted to legal heirs of Janardhanan Asan, Sukumaran Asan and Balakrishnan Asan and appellant has no right, title or possession over the plaint schedule property.

2. Learned Munsiff framed necessary issues. On the evidence of PW1, DW1 and DW2, Exts. A1 to A7, B1 to B6 and C1 to C3, learned Munsiff found that appellant did not establish her right, title or possession over the plaint schedule property and held that appellant is not entitled to the decree sought for. Suit was dismissed. Appellant challenged the decree and judgment before District Court, Kollam in R.F.A. 22/2004. Learned District Judge on re-appreciation of evidence confirmed the decree passed by the learned Munsiff and dismissed the appeal. That is challenged in this Second Appeal.

3. Learned counsel appearing for the appellant was heard.

4. The learned counsel appearing for the appellant argued that

courts below did not property appreciate the evidence. According to the learned counsel, the plaint schedule property was correctly demarcated by the commissioner in Ext.C3 plan and as seen from Ext.C1 report, plaint schedule property with the remaining property belonging to the appellant is a compact plot and the revenue records supports the case of appellant and even though there was some discrepancy or mistake with respect to boundaries in Ext.A1, it was clarified in Ext.A5 sale deed and therefore courts below should have granted the decree sought for.

5. Learned Munsiff and learned District Judge considered the evidence elaborately on the basis of the documents relied on by the parties. Under Ext.A1 partition deed, 25 cents which originally belonged to Sukumaran Asan, his brother Janardhan Asan and nephew Balakrishnan Asan were divided into three plots. The western 8½ cents was allotted to Balakrishnan Asan. The eastern 8¼ cents was allotted to Sukumaran Asan and middle 8¼ cents was allotted to legal heirs of Janardhanan Asan. The disputed property is the part of the middle 8¼ cents plot covered under Ext.A1 partition deed. Courts below on the evidence found that 2nd respondent obtained 4 cents of that middle plot as per Ext.B1 purchase certificate. Under Ext.B2 1.90 cents was obtained by first respondent from the legal heirs of Sukumaran Asan. Appellant can claim right and title to only the eastern 8 ¼ cents allotted to Sukumaran Asan under Ext.A1 and 1 ½ cents covered under Ext.A2. Even though that extent should be 9 ¾ cents, even according to appellant what was obtained was only 9 cents. Courts

below on the evidence found that plaint schedule property is part of the 8 ¼ cents allotted to legals heirs of Janardhanan Asan which was the middle plot and lies to the north of the property of Sukumaran Asan and appellant did not get and cannot claim any right or title to the property which lies to the north of Ext.B1 property. The evidence establish that Sukumaranasan was not given any property which lies to north of the property obtained under Ext.B1 as kudikidappu, from the property allotted to legal heirs of Janardhanan Asan under Ext.A1 partition deed. On the basis of the factual findings courts below held that appellant is not entitled to the decree sought for. No substantial question of law is involved in this appeal.

In the result, the Regular Second Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE.

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